

AMENDED IN ASSEMBLY APRIL 6, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 335

Introduced by Assembly Member Patterson

(Coauthors: Assembly Members *Baker, Brough, Chang, Chávez, Gallagher, Lackey, Olsen, Steinorth, and Waldron* ~~Wagner, Waldron, and Wilk~~)

(~~Coauthor: Senator Anderson~~)

(~~Coauthors: Senators Anderson, Bates, Huff, Nielsen, and Vidak~~)

February 13, 2015

An act to add Chapter 3 (commencing with Section 39150) to Part 1 of Division 26 of the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

AB 335, as amended, Patterson. Air quality: minor violations.

(1) Existing law authorizes the State Air Resources Board and air pollution control and air quality management districts to enforce air quality laws.

This bill would require the State Air Resources Board and air pollution control and air quality management districts to adopt regulations classifying minor violations. The bill would define the term “notice to comply” and would require a representative of those agencies, who in the course of conducting an inspection detects a minor violation, to issue a notice to comply, as specified. *The bill would exempt an air pollution control or air quality management district from these provisions if it has in effect, as of January 1, 2015, a program with similar provisions, as specified.*

The bill would require the State Air Resources Board to report to the Legislature by January 1, 2020, regarding implementation of the bill.

Because the bill would make a false statement of compliance submitted under those procedures a crime pursuant to specified provisions, the bill would impose a state-mandated local program by creating a new crime. In addition, the bill would impose a state-mandated local program by imposing new requirements on air pollution control and air quality management districts.

(2)The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 3 (commencing with Section 39150) is
2 added to Part 1 of Division 26 of the Health and Safety Code, to
3 read:

4
5 CHAPTER 3. MINOR VIOLATIONS
6

7 39150. (a) The Legislature hereby finds and declares that the
8 purpose of this chapter is to establish an enforcement policy for
9 violations of this division that the enforcement agency finds are
10 minor when the danger they pose to, or the potential that they have
11 for endangering, human health, safety, or welfare or the
12 environment is taken into account.

13 (b) It is the intent of the Legislature in enacting this chapter to
14 provide a more resource-efficient enforcement mechanism, faster
15 compliance times, and the creation of a productive and cooperative
16 working relationship between the state board, the districts, and the
17 regulated community while maintaining protection of human health
18 and safety health, safety, and welfare and the environment.

19 (c) ~~The~~ Except as provided in Section 39154, the state board
20 and each district shall, for their respective jurisdictions, implement
21 this chapter by adopting a regulation or a rule that classifies the
22 types of violations of this division, or of the regulations, rules,
23 standards, orders, permit conditions, or other requirements adopted

1 pursuant to this division, that the state board or the district finds
2 are minor violations in accordance with subdivision (d).

3 (d) In classifying the types of violations that are minor
4 violations, the state board or the district shall consider all of the
5 following factors:

6 (1) The magnitude of the violation.

7 (2) The scope of the violation.

8 (3) The severity of the violation.

9 (4) The degree to which a violation puts human health, safety,
10 or welfare or the environment into jeopardy.

11 (5) The degree to which a violation could contribute to the
12 failure to accomplish an important goal or program objective as
13 established by this division.

14 (6) The degree to which a violation ~~may~~ *could* make it difficult
15 to determine if the violator is in compliance with other
16 requirements of this division.

17 (e) For purposes of this chapter, a minor violation of this division
18 shall not include any of the following:

19 (1) Any knowing, willful, or intentional violation of this
20 division.

21 (2) Any violation of this division that enables the violator to
22 benefit economically from noncompliance, either by realizing
23 reduced costs or by gaining a competitive advantage.

24 (3) Any violation that is a chronic violation or that is committed
25 by a recalcitrant violator.

26 (f) In determining whether a violation is chronic or a violator
27 is recalcitrant, for purposes of paragraph (3) of subdivision (e),
28 the state board or district or an authorized or designated officer
29 shall consider whether there is evidence indicating that the violator
30 has engaged in a pattern of neglect or disregard with respect to the
31 requirements of this division or the requirements adopted pursuant
32 to this division.

33 39151. For purposes of this chapter, “notice to comply” means
34 a written method of alleging a minor violation that is in compliance
35 with all of the following requirements:

36 (a) The notice to comply is written in the course of conducting
37 an inspection by an authorized representative of the state board or
38 district or an authorized or designated officer. If testing is required
39 by the state board or district or an authorized or designated officer
40 to determine compliance, and the testing cannot be conducted

1 during the course of the inspection, the representative of the state
2 board or the district or an authorized or designated officer shall
3 have a reasonable period of time to conduct the required testing.
4 If, after the test results are available, the representative of the state
5 board or district or an authorized or designated officer determines
6 that the issuance of a notice to comply is warranted, the
7 representative or officer shall immediately notify the facility owner
8 or operator in writing.

9 (b) A copy of the notice to comply is presented to a person who
10 is an owner, operator, employee, or representative of the facility
11 being inspected at the time that the notice to comply is written. If
12 offsite testing is required pursuant to subdivision (a), a copy of the
13 notice to comply may be mailed to the owner or operator of the
14 facility.

15 (c) The notice to comply clearly states the nature of the alleged
16 minor violation, a means by which compliance with the
17 requirement cited by the state board's or district's representative
18 or an authorized or designated officer may be achieved, and a time
19 limit in which to comply, which shall not exceed 30 days.

20 (d) The notice to comply shall contain the information specified
21 in subdivision (h) of Section 39152 with regard to the possible
22 reinspection of the facility.

23 39152. (a) An authorized representative of the state board or
24 district or an authorized or designated officer, who, in the course
25 of conducting an inspection, detects a minor violation shall issue
26 a notice to comply before leaving the site at which the minor
27 violation is alleged to have occurred if the authorized representative
28 finds that a notice to comply is warranted.

29 (b) A person who receives a notice to comply pursuant to
30 subdivision (a) shall have the period specified in the notice to
31 comply from the date of receipt of the notice to comply in which
32 to achieve compliance with the requirement cited on the notice to
33 comply. Within five working days of achieving compliance, the
34 person who received the notice to comply shall sign the notice to
35 comply and return it to the state board's or district's representative
36 or an authorized or designated officer, stating that the person has
37 complied with the notice to comply. A false statement that
38 compliance has been achieved is a violation of this division
39 pursuant to Section 42400.2 or 42402.2.

1 (c) A single notice to comply shall be issued for all minor
2 violations cited during the same inspection and the notice to comply
3 shall separately list each cited minor violation and the manner in
4 which each minor violation may be brought into compliance.

5 (d) A notice to comply shall not be issued for any minor
6 violation that is corrected immediately in the presence of the
7 inspector. Immediate compliance in that manner may be noted in
8 the inspection report, but the person shall not be subject to any
9 further action by the state board's or district's representative or an
10 authorized or designated officer.

11 (e) Except as otherwise provided in subdivision (g), a notice to
12 comply shall be the only means by which the state board's or
13 district's representative or an authorized or designated officer shall
14 cite a minor violation. The state board's or district's representative
15 or an authorized or designated officer shall not take any other
16 enforcement action specified in this division to enforce the minor
17 violation against a person who has received a notice to comply if
18 the person is in compliance with this section.

19 (f) If a person who receives a notice to comply pursuant to
20 subdivision (a) disagrees with one or more of the alleged violations
21 cited in the notice to comply, the person shall give written notice
22 of appeal to the state board or district, which shall develop a
23 process for reviewing and determining the disposition of the appeal.

24 (g) Notwithstanding any other provision of this section, if a
25 person fails to comply with a notice to comply within the
26 prescribed period, or if the state board or district or an authorized
27 or designated officer determines that the circumstances surrounding
28 a particular minor violation are such that immediate enforcement
29 is warranted to prevent harm to ~~the public health or safety or to~~
30 *human health, safety, or welfare* or the environment, the state
31 board or district or an authorized or designated officer may take
32 any needed enforcement action authorized by this division.

33 (h) A notice to comply issued to a person pursuant to this section
34 shall contain a statement that the inspected facility may be subject
35 to reinspection at any time. Nothing in this section shall be
36 construed as preventing the reinspection of a facility to ensure
37 compliance or to ensure that minor violations cited in a notice to
38 comply have been corrected.

39 (i) Nothing in this section shall be construed as preventing the
40 state board or district or an authorized or designated officer, on a

1 case-by-case basis, from requiring a person subject to a notice to
2 comply to submit reasonable and necessary documentation to
3 support a claim of compliance by the person.

4 (j) Nothing in this section restricts the power of a city attorney,
5 district attorney, county counsel, or the Attorney General to bring,
6 in the name of the people of California, any criminal proceeding
7 otherwise authorized by law. Furthermore, nothing in this section
8 prevents the state board or district, or any representative of the
9 state board or district, from cooperating with, or participating in,
10 such a proceeding.

11 (k) Notwithstanding any other provision of this section, if the
12 state board or district or an authorized or designated officer
13 determines that the circumstances surrounding a particular minor
14 violation are such that the assessment of a civil penalty pursuant
15 to this division is warranted or required by federal law, in addition
16 to issuance of a notice to comply, the state board or district or an
17 authorized or designated officer shall assess a civil penalty in
18 accordance with this division, if the state board or district or an
19 authorized or designated officer makes written findings that set
20 forth the basis for the determination of the state board or district.

21 39153. On or before January 1, 2020, the state board shall
22 report to the Legislature on actions taken by the state board and
23 the districts to implement this chapter and the results of that
24 implementation. Each district shall provide the state board with
25 the information that the state board requests to determine the degree
26 to which the purposes described in subdivision (a) of Section 39150
27 have been achieved. The report shall be submitted consistent with
28 Section 9795 of the Government Code.

29 39154. *Sections 39150, 39151, and 39152 do not apply to a*
30 *district that, as of January 1, 2015, has in effect a program with*
31 *provisions similar to those required by this chapter.*

32 SEC. 2. No reimbursement is required by this act pursuant to
33 Section 6 of Article XIII B of the California Constitution because
34 a local agency or school district has the authority to levy service
35 charges, fees, or assessments sufficient to pay for the program or
36 level of service mandated by this act or because costs that may be
37 incurred by a local agency or school district will be incurred
38 because this act creates a new crime or infraction, eliminates a
39 crime or infraction, or changes the penalty for a crime or infraction,
40 within the meaning of Section 17556 of the Government Code, or

- 1 changes the definition of a crime within the meaning of Section 6
- 2 of Article XIII B of the California Constitution.

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